

# THE CODE OF THE CITY OF FALLS CHURCH, VIRGINIA

## Chapter 38 ZONING\*

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**\*Charter references:** Planning, zoning and subdivision control, Ch. 17.

**Cross references:** Department of planning, § 2-2, buildings, Ch. 6; condominiums, Ch. 8; conformance with zoning requirements by condominium developers, § 8-8; housing, Ch. 16; outdoor lighting, Ch. 23; pools, Ch. 27; public utilities, Ch. 29; subdivisions, Ch. 31; streets and sidewalks, Ch. 32; underground utilities, Ch. 36

**State law references:** State law pertaining to zoning, Code of Va., § 15.1-486 et seq.

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## ARTICLE IV. SUPPLEMENTARY PROVISIONS

### Sec. 38-39. HCC, Historic and Cultural Conservation District.

(a) *Policy, purpose, intent.*

(1) The council of the city finds that retention and protection of historic, architectural and cultural legacy of the city wherever feasible is important to the environmental well-being of the city, enhances property values, encourages desirable forms of economic development, and provides a stabilizing influence for the community's cultural and social life. The council further finds that visual evidence of the community's history, architecture and characteristic way of life is valuable for educational, cultural and recreational purposes.

(2) The council finds that residences, structures and sites of historical, architectural and cultural interest and significance are scattered throughout the small, two (2) square-mile area of the city. Such residences and structures consist of a very few built during the colonial period, a somewhat larger number built before the Civil War, and a considerable number built in the period between the Civil War and World War I. Many of these are listed in the city's architectural inventory of 1969, as amended. The council also finds that structures built as residences during or before 1910 are, in general, of historic architectural and cultural interest; and that the significance of these structures may be either as noteworthy landmarks, recognized for their individual merits, or as elements that contribute to the particular qualities of a scene, neighborhood, or locality which has significance.

(3) The council further finds, that, because of the reasons stated above and because of the scattered location of these structures and sites of historical, architectural and cultural significance, the entire city should be designated as a historic and cultural

conservation district.

(4) The council, therefore, declares that it is the policy of the city to preserve and protect its architectural, cultural and historical heritage and to encourage and assist preservation of historically, architecturally and culturally significant sites, buildings and structures.

(5) The purpose of this section is to establish a historic and cultural conservation district. It is the intent that the benefits to the community and property owners in such district will be realized as fully as possible, with a minimum of expense and delay, in accordance with the objectives of the section.

(6) The land use regulations applicable within this district are intended to protect against destruction of structures and to encourage their conservation as part of the cultural, social, economic, political or architectural heritage of the city.

(7) It is further the intent of these regulations to utilize the advice of the Falls Church Historical Commission, the Falls Church Architectural Advisory Board, and other organization or individuals qualified by experience, training and interest to assist in carrying out the provisions of this section, consistent with the policy of the city.

(b) *Creation of the historic architectural review board.* There shall be created for purposes as set out in this section an historic architectural review board (referred to as "HARB" or the "board"). The HARB shall have five (5) members. Each member shall be appointed by the city council for staggered terms commencing with two (2) members for two (2) years and three (3) members for four (4) years. In selecting members, the council may consider, among other factors, potential members' demonstrated interest, competence or knowledge in historic preservation, archaeology or planning; and at least one (1) member shall be an architect or an architectural historian. The members of the historic architectural review board after appointment by the city council shall convene the first meeting, at which time the HARB shall select a chairman, vice-chairman, and secretary. The HARB shall meet when necessary to carry out its duties as described herein. The HARB may obtain and utilize the technical assistance of professional advisors where it considers such assistance desirable.

(c) *Historic and Cultural Conservation ("HCC") District created.* A Historic and Cultural Conservation ("HCC") District is hereby established pursuant to § 15.1-503.2 of the Code of Virginia, as amended, to promote the general welfare through preservation and protection of sites, buildings and structures having historical, architectural or cultural significance. This HCC District is created as a zoning overlay district which shall cover all land within the boundaries of the city. The boundaries of the HCC are those as stated in the City Charter at § 1.02. Any parcel of land lying in the HCC District shall also be in one (1) or more of the other zoning districts provided for in this chapter. The HCC District regulations contained herein are applicable to the following designated structures

and sites:

- (1) All structures built as residences during or before 1910, and
- (2) Other structures and sites of historical, cultural or architectural significance expressly designated pursuant to section 38-39(f) below.

(d) Official register of protected structures and sites. Upon completion of the certification in (e) below or upon specific designation pursuant to section 38-39(c)(2), structures and sites shall be listed in the Official Register of Protected Structures and Sites and the designation shall be recorded in the land records. Listing in the Official Register is not a requirement for protection under section 38-39.

(e) *Certification of structures built during or before 1910.*

(1) The Falls Church Historical Commission shall certify to the planning department the date upon which the structure or a significant part thereof was built and shall cite the source for such certification. If an exact date is not ascertainable, the historical commission shall cite evidence that the structure was built during or before 1910.

(2) Upon receipt of such certification, the planning department shall notify the owner(s) of the structure that the structure will be placed on the Official Register of Protected Structures and Sites unless an objection is filed within thirty (30) days from the mailing of the notice. Such notice shall include an identification of the lot or parcel which is subject to regulation under this section and the nature of the regulations and the procedure for objection. A copy of the notice shall be sent to the building inspector and zoning administrator. The objection will be heard within forty-five (45) days, unless deferred by the planning commission for administrative necessity, or to enable further research or investigation to be made by the owner or on behalf of the city, or for other good cause shown.

(3) The planning commission shall hear and decide all objections to the accuracy of the certification. No formal rules of evidence shall apply; but the commission shall hear the owner or his representative and shall hear such other evidence as the commission deems relevant, material and trustworthy. The planning commission may, by its bylaws or by resolution, determine such requirements for handling objections as it deems proper, including such matters as establishing a hearing date after receiving a request, prescribing the form in which evidence about dates of construction shall be submitted, and fixing the time of submission.

(4) The owner of the historical commission may appeal the decision of the planning commission to the city council by filing a written notice of appeal with the clerk of the council within fifteen (15) days after the decision by the planning commission. Alternatively, the owner or the historical commission may note the appeal with the planning commission at the time of the planning commission's

decision and the planning commission shall forward such notice to the city clerk. The council shall review the record made in the planning commission and decide the appeal within sixty (60) days of its receipt by the clerk, unless extended for good cause. The council shall uphold the planning commission unless the commission's decision was contrary to law or that the decision was not supported by a preponderance of evidence.

(f) *Procedure for designating other structures and sites of architectural, historical, or cultural significance.*

(1) The historical commission may petition the planning commission for the addition of residential structures built after 1910 or nonresidential structures built at any time, and of sites which would be regulated under section 38-39. Such structures and sites may be designated in the manner prescribed in section 38-4 for amendments to the zoning code and subject to the following procedures:

- a. Petitions shall be accompanied by a written report describing the architectural, historical or cultural significance of the structure(s) and sites to be protected.
- b. In making its required recommendation under section 38-4, the planning commission shall prepare and submit to the city council its recommendations concerning the structure(s) or sites. The planning commission's report shall indicate existing land uses, special problems, trends and other matters bearing upon the proposed designation for architectural, historical and cultural preservation, as well as a description of the lot(s) or parcel(s) which would be made subject to regulation under this section.
- c. The council, in designating structures and sites, may do so only if the structure or site meets one (1) or more of the following criteria:
  1. It exemplifies or reflects important aspects of the cultural, political, economical, social or military history of the nation, state, region or the City of Falls Church.
  2. It is associated with persons or events of national, state or regional significance.
  3. It is a good example of local or regional architectural design, making it valuable for the study of a period, style or method of construction which no longer is in general use.
  4. It contains elements of design, detail, materials or craftsmanship which represent a significant innovation in architecture, construction or technology.

(g) *Permits required for properties subject to regulation.* In addition to the use regulations within the zoning districts overlaid by the HCC District, the following regulations shall apply:

(1) The same building permits shall continue to be required for work on structures subject to regulation under this section as for other structures. For all building permit applications, the building inspector shall review available evidence in order to determine in writing if the structure is designated for protection under section 38-39(c)(1) or (2). In examining the issue of whether the structure was built as a residence during or before 1910, the inspector shall refer the matter to the director of planning and development for his determination and the inspector shall follow the director's determination. The best available information shall be consulted which shall include consideration of whether the structure has been certified pursuant to section 38-39(e). Certification shall be conclusive of the director's and inspector's determination. If certification has not been accomplished, the director must request an opinion from the historical commission, or the director may make an inquiry into other available information. During this inquiry, the application for a building permit shall be held in abeyance until the inquiry is finally completed and the inspector's determination is issued. The application for the building permit shall be held in abeyance for a period not to exceed thirty (30) days. If sufficient evidence exists to support the historical commission's opinion that the structure was built during or before 1910 as a residence and thus a designated structure, the commission shall inform the director of planning prior to the expiration of the thirty-day period; if the structure has not yet been certified using the process in section 38-39(e), the commission shall also proceed to certify the structure by initiating within the thirty-day period the notice to the owner of the structure as set out in section 38-39(e). However, if the owner believes the structure is not designated for protection under section 38-39(c)(1), the owner shall have the right to challenge the building inspector's determination before the planning commission and thereafter by appeal to the city council. The appeal to the commission shall be made within thirty (30) days of the date of the inspector's decision; the commission shall conduct the appeal as set out in section 38-39(e)(3). The council shall uphold the commission unless the commission's decision was contrary to law or was not supported by a preponderance of evidence. If an appeal was made at the time of the certification process in section 38-39(e), no other appeal may be made absent submission of information which was not considered at the time of the original certification.

(2) a. No structure designated in section 38-39(c)(1) or (2) shall be razed, moved or altered without first obtaining a permit from the building inspector, which shall be issued only after approval of the same by the HARB, or, on appeal, by the city council after consultation with the HARB. The fee for a building permit subject to review by the HARB pursuant to this section shall be one-half ( 1/2) the usual building permit fee.

b. 1. Alter or alteration shall mean a substantial change in the structure and/or its distinguishing qualities or characteristic. Examples include the following:

additions to or removal of parts of the structure that increase the floor area or otherwise change substantially its size, height, contour or outline; covering a substantial portion of the exterior of the structure with materials other than the same kind used; removal, alteration or addition of major architectural features, such as porches, dormers, cupolas, stairways, terraces and the like; and any other similar major change not specifically noted. Examples of changes that are not alterations include changes inside the structure; replacement "in kind" of any features on the exterior of the structure; repainting in the same or a different color; addition or deletion of storm windows and door, window gardens, awnings, temporary canopies, or similar appurtenances and window air conditioners; addition or deletion of television or radio antennas; any alterations to the rear of the structure which cannot be seen from the street contiguous to the front yard of the structure; all improvements, alterations or renovations which can be accomplished without obtaining a building permit; or any similar minor changes.

2. "In kind" means the same profile, material, design and operating mechanism of the structure that was present when the protection of this section was effective.

3. Razing shall mean the complete destruction of the structure.

4. Moving shall mean changing the location of the structure. It does not include, for example, the temporary lifting of a structure for purposes of adding a basement.

(3) If moving a structure requires a variance, no variance shall be reviewed by the board of zoning appeals until a recommendation has been made by the HARB and the historical commission.

(4) Nothing in this section is intended to replace existing provisions concerning variances that are related to site plans.

(5) A contract owner shall be able to apply for any permit required by this section.

(6) Ancillary structures. Altering, construction or reconstruction of all ancillary structures (or outbuildings) shall be no more than one and one-half ( 1/2) stories and not exceed twenty (20) feet in height measured to the peak of the roof, of materials, detailing and roof pitch to match the architectural style of the historic structure designated in section 38-39(c)(1) or (2) and shall be exempt from architectural and design limitations that are imposed otherwise in the Code. The ancillary structure shall be in style, scale and proportion compatible with the historic structure. HARB approval is required prior to issue of permits by the City.

(h) *Procedures for obtaining permits.* The procedure for obtaining permits for moving, alterations, razing of a designated structure or construction of an ancillary structure shall be as follows:

(1) The HARB shall hold a public hearing on each request for a permit requiring its approval. The board may promulgate guidelines concerning procedures to be followed.

(2) Within ten (10) days after receipt of a complete application, the HARB shall notify, by first class mail, owners of adjacent properties and the historical commission of the date of the public hearing on the application. Such hearing shall be held at least ten (10) days but not more than thirty (30) days after such notification. The hearing shall be advertised in at least one (1) newspaper of general circulation in the city and shall include notice of the time and place of the public hearing on the application.

(3) At the public hearing, the HARB shall:

- a. Consider any recommendation from the historical commission. If the commission has not forwarded a recommendation, the board need not delay its own decision, but it may for good cause.
- b. Hear the applicant and any other person desiring to speak.
- c. Request such additional information from the applicant as it may desire, so that, if at all possible, the decision need not be deferred to a later meeting.

(4) The board shall approve or deny a permit by majority vote, giving reasons for the decision. Failure of the board to reach a final decision within thirty (30) days of receipt by the board of the requested information shall be deemed to be approval by the board.

(5) If a variance is required, the board shall forward its recommendations to the board of zoning appeals, and the approval by the HARB shall be conditioned upon the approval of the variance by the board of zoning appeals.

(6) Following a decision by the HARB, the building inspector shall allow a ten-day period for appeals. The permit shall be issued or denied according to the decision of the board unless an appeal has been filed pursuant to section 38-39(j). In that case, the building inspector shall not act until a determination has been made on the appeal.

(i) *Matters to be considered by the HARB for permits. “*

(1) *Application for a permit to raze a building or structure.* The board shall review the circumstances of the proposed razing and the condition of the structure proposed for razing and shall report its findings based on consideration of the following criteria:

- a. Is the building of such architectural or historical interest that razing it would be detrimental to the public interest? In this connection the HARB must consider the purpose of preservation and may consider the criteria for designating

structures listed in section (f) above and the "National Register Criteria for Evaluation."

- b. Is the design, texture and material of the building so old or unusual that it could not be reproduced or reconstructed in a financially reasonable manner?
- c. Is the building structurally sound or can it be made sound at reasonable cost?
- d. If maintained or rehabilitated and used under existing zoning, can the building be expected to yield a reasonable return or beneficial use at reasonable cost to its owner?
- e. Could the building be saved from razing by moving it to another site, thus making its present site available for redevelopment in accordance with existing zoning?

(2) *Application for a permit to move a building or structure.* The board shall consider the following criteria:

- a. Would the proposed relocation have a detrimental effect on structural soundness of the building or structure?
- b. Would the proposed relocation have a detrimental effect on the historical aspects of other historic structures in the HCC District?
- c. Would relocation prevent demolition of the building?
- d. Would relocation provide new surroundings that would be harmonious with or incongruous to the historical and architectural aspects of the structure or building?
- e. Would relocation of the building help preserve and protect a historic place or area of historic interest in the city?
- f. The economic hardship, if any, to the applicant.

(3) *Application for a permit to alter a building or structure.* The board shall consider the drawings and other plans for the proposed alteration. The board shall have the authority to require plans that, in its opinion, provide sufficient detail, clarity and to scale to show the existing conditions and the proposed changes. The board shall adopt rules governing the application procedure. The board shall use the criteria on integrity as set out in the most current "National Register Criteria for Evaluation" published by the National Park Service and the Secretary of the Interior's Standards for Rehabilitation for Historical Preservation Projects. The board shall be able to provide advice to the applicant that it believes would make the alteration more compatible with the structure and not substantially diminish the integrity of the



structure. Upon giving advice, the board shall grant the permit. In all cases, the board shall state its advice in writing and the basis for it within thirty (30) days of the receipt of the application to alter a structure.

(4) *Application for a permit to construct an ancillary structure.* Before any permits are issued by the city to alter or construct an ancillary structure on a land parcel in the Historic and Cultural Conservation District or a parcel of land that is also occupied by a structure on the City Official Register of Protected Structures and Sites, application shall be made by the owner by letter to the HARB (via the planning division) with appropriate building plans, including elevations and specifications for all surfaces and materials. The board shall hear the case within thirty-five (35) days from the receipt of the application. The board will make its decision concerning permit approval in writing within ten (10) days of the conclusion of the hearing. Appeals of HARB decisions may be made under the procedures of section 38-39(k). City permits may be issued after a HARB approval or conditional approval.

(j) *Maintenance of historic properties.*

(1) *Routine maintenance exclusion.* Nothing in this section shall be construed to prevent the routine maintenance or repair of any exterior elements of any building or structure so long as there is no change in form or materials.

(2) *Protective maintenance requirement.* Pursuant to Article 9, Section 15.1-503.2(b) of the Code of Virginia, as amended, the purpose of this section is to prevent the demolition by neglect of any building or structure by permitting permanent damage by weather or vandalism. The intent of this section is to ensure that the owner of any building or structure subject to the provisions of this section shall keep such building or structure properly maintained and repaired in accordance with this section, and the provisions of the building and housing codes.

(3) *Degree of maintenance required.* The degree of maintenance and repair hereby required is that degree sufficient to prevent damage to the structural components and/or the exterior that would cause the collapse of the structure or that would cause the building to become so deteriorated as to prevent its repair and preservation. Acts which the owner may be required to perform pursuant to this paragraph shall include the following: securing the building or structure by boarding up doors and windows; stabilizing walls, roofs and other parts of the building or structure; and termite treatment.

(4) *Enforcement.* The board shall request a meeting with an owner when a property is in a seriously deteriorated condition and the board shall discuss with the owner ways to improve the condition of the building or structure. After this step the board may request the building inspector to investigate further the condition of such building or structure and to make a determination within fourteen (14) days of violations of this section. Upon finding that a building is in seriously deteriorated condition which threatens its preservation, the building inspector shall notify the

owner in writing and shall identify specific repairs and work necessary to comply with the provisions of this section. The owner shall have ninety (90) days from written notification to complete necessary repairs and work identified by the building inspector. Failure to complete the necessary repairs and work within ninety (90) days shall constitute a violation of this section. The owner may appeal an order of the building inspector to the city council.

(k) *Appeals to the council.* Appeals to decisions of the HARB may be made to the city council:

(1) Whenever a permit is denied by the HARB, the applicant for such permit has the right to appeal to and be heard before the city council, provided that he files a petition of appeal in writing with the city clerk within ten (10) days after the decision of the HARB. Alternatively, the owner may note the appeal with the HARB at the time of its decision and HARB shall forward such notice to the city clerk.

(2) Whenever a permit is approved by the HARB, opponents to the granting of such permit have the right to appeal to and be heard before the city council, provided they file a petition signed by at least twenty-five (25) adult residents and/or persons owning real estate in the city with the city clerk within ten (10) days after the decision by the HARB. On any appeal, the decision of the HARB to grant a permit shall be stayed pending the outcome of the appeal before the city council.

(3) Upon receipt of an appeal as provided in (1) or (2) above, the city clerk shall notify the city manager, who shall schedule a public hearing before the city council within thirty (30) days of the date of receipt of the notice of appeal. At least ten (10) days notice of the time and place of such hearing shall be given by at least one (1) publication in a newspaper of general circulation in the city. At the public hearing, the council shall hear a representative of the HARB. On any appeal, the city council shall review the record below and it may reverse or modify the decision of the HARB if it finds the decision is contrary to law or that its decision is not supported by a preponderance of evidence, or it may affirm the decision of the HARB. The council may remand the matter to the HARB any time substantial new evidence is presented to the council. The council's decision shall be forwarded to the building inspector.

(l) *Appeals to the circuit court.* Any applicant or any petitioners, as defined above, aggrieved by a final decision of the city council shall have the right to appeal such decision to the circuit court having proper jurisdiction for review. Such appeal shall be a petition at law, setting forth the alleged illegality of the action of the city council, and shall be filed within thirty (30) days after the final decision is rendered by the city council.

The filing of said petition shall stay the decision of the governing body and any permit issued according to that decision, except that the filing of such petition shall not stay the decision of the city council if such decision denies the right to demolish a historic structure or building.

The court may reverse or modify the decision of the city council, in whole or in part, if it finds upon review that the decision of the city council is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion, or it may affirm the decision of the city council.

(m) *Additional rights of property owners.* In addition to the right of appeal herein above set forth, the owner of a historic landmark, building or structure, the demolition of which is subject to the provisions of subsection (g) hereof, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided:

- (1) The owner has appealed to the city council for such right;
- (2) The owner has, for the period of time set forth in the time schedule hereinafter contained and at a price reasonably related to its fair market value, made a bona fide offer to sell such landmark, building or structure and the land pertaining thereto, to any person, firm, corporation, government or agency therefore, which gives reasonable assurance that it is willing to preserve and restore the landmark, building or structure and the land pertaining thereto; and
- (3) That no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any such landmark, building or structure and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained.

Any appeal which may be taken to the court from the decision of the city council, whether instituted by the owner or by any other proper party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell pursuant to the provisions of this subsection referred to above.

The time schedule for offers to sell pursuant to the provisions of this subsection shall be as follows: Five (5) months when the offering price is less than fifty-five thousand dollars (\$55,000.00); six (6) months when the offering price is fifty-five thousand dollars (\$55,000.00) or more but less than seventy-five thousand dollars (\$75,000.00); seven (7) months when the offering price is seventy-five thousand dollars (\$75,000.00) or more but less than ninety thousand dollars (\$90,000.00); and twelve (12) months when the offering price is ninety thousand dollars (\$90,000.00) or more.

(n) *Official plaques.* The city shall, upon request of the owner of a structure in the Official Register of Protected Structures and Sites, make available a plaque which is suitable in terms of materials and aesthetics for mounting on an exterior wall. This plaque shall indicate in wording to be determined by the planning department that the building is officially designated as historically or culturally significant.

(o) *Additional requirements for properties subject to regulation.*

(1) A lot in the R-1A or R-1B district on which a designated structure is located shall not be reduced in size such that it no longer meets the minimum lot size, frontage, and setback requirements of a lot in the R-1A district. A lot existing at the time of designation of the structure which is substandard with respect to the minimum lot size, frontage, or setback requirements of a lot in the R-1A district shall not be further reduced in size, unless any substandard feature remains unaffected.

(2) A lot on which a designated structure is located shall not be utilized in any calculation of land area required in the R-C, R-TH or R-M district.

This section shall not apply to any designated structure for which a bona fide site plan or building permit has been filed with the city on or before the first reading of this section.

(Ord. No. 1072, 5-29-84; Ord. No. 1277, § 7, 10-10-89; Ord. No. 1388, 2-10-92; Ord. No. 1465, 2-28-94; Ord. No. 1632, 2-8-99)